Filed 9/14/12 In re J.T. CA2/8

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re J.T., A Person Coming Under the Juvenile Court Law.	B238032
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. J.M., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK79533)

APPEAL from a judgment of the Superior Court of Los Angeles County. Marilyn Martinez, Judge. Dismissed.

Janette Freeman Cochran, under appointment by the Court of Appeal, for Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel and Tracey F. Dodds, Deputy County Counsel, for Respondent.

Mother J.M. appeals from the dependency court's 12-month review order following the court's earlier assumption of jurisdiction over her three-year-old son, J.T. She contends the court committed several errors that violated her due process rights. Because the 18-month review hearing has already been conducted, we conclude that the appeal is moot and therefore dismiss it.

FACTS AND PROCEDURAL HISTORY[1]

In December 2009, the dependency court took jurisdiction of one-year-old J.T. after sustaining a finding that mother J.M., who was then about to turn 17, had repeatedly left the boy with her maternal great grandmother for up to a week at a time without making appropriate plans for his care. Because mother's whereabouts were unknown, the court found, the child was placed at risk of physical and emotional harm. (Welf. & Inst. Code, § 300, subd. (b)(1).)[2] A June 2010 dispositional order released J.T. to mother on the condition that both would live with maternal grandmother A.I. Mother was also ordered to participate in various forms of counseling and parenting education, to remain in school, and to verify that she was leading a safe and sober lifestyle.

In October 2010, the dependency court sustained a section 387 petition filed by the Los Angeles County Department of Children and Family Services to remove J.T. from mother's care because she disobeyed the court's order to live with maternal grandmother, frequently took J.T. to unknown locations, and failed to give the Department sufficient access to the child to ensure his safety. J.T. was placed with his paternal grandmother, and the Department was ordered to provide mother with reunification services.

The six-month review hearing (§ 366.21, subd. (e)) was held in April 2011, by which time mother had turned 18. The court found that mother was trying to address her various issues and maintain regular visits with J.T. However, the court also found that

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1 In view of our determination that the appeal is moot, we have distilled the facts to those necessary for context.

2 All further section references are to the Welfare and Institutions Code.

mother was moving around and was unable to show stability or verify substantial progress. The court ordered that the Department continue to provide her with reunification services and gave it discretion to liberalize visitation if warranted.

Mother's appeal arises from the 12-month review hearing (§ 366.21, subd. (f)), which took place on October 4, 2011. The Department's status review report was supposed to be served at least 10 days before the hearing. (§ 366.21, subd. (c).) However, the report prepared for that hearing was signed by the social worker on September 27, 2011, and filed with the court on October 4, 2011. At the start of the hearing, the court stated that it could not confirm when the report had been sent. No objection was raised that the report had not been timely served.

The report stated that even though the paternal grandmother regularly brought J.T. to the Department's offices for his twice-weekly supervised visits with mother, the mother only showed up about once a month. On August 23, 2011, mother failed to appear for a drug test that the Department asked her to take. Mother said she was taking part in the various forms of counseling and therapy ordered by the court through the New You Center. A letter confirming this fact was received by the Department. The letter stated that mother attended the program three times a week, and that the program usually lasted from six months to one year. The report noted that mother still needed to enroll in parenting education for teen mothers and individual counseling to address various case-related issues. She also needed to receive training regarding J.T.'s medical needs. According to the report, mother had partially complied with the court's orders, and recommended that reunification services continue.

At the 12-month review hearing, mother asked for a contested hearing on the following issues: (1) whether she had made sufficient progress to be awarded unsupervised visits with J.T.; (2) whether reasonable reunification services had been offered because she needed housing assistance and help paying her school fees. The trial court refused to set a contested hearing on those issues, but did order the Department to provide mother with housing assistance and payment of her school fees.

On appeal, mother contends that the dependency court violated her due process rights because she did not receive the Department's status report within 10 days of the hearing, and because the court denied her requests for a contested hearing.

DISCUSSION

We assume failure to provide mother with a copy of the status report prepared for the 12-month review hearing at least 10 days before that hearing violated mother's due process rights. (*Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, 540.) And we make the same assumption about the dependency court's refusal to hold a contested hearing after mother's request. (*David B. v. Superior Court* (2006) 140 Cal.App.4th 772, 778-780.) However, in the interim, the 18-month review hearing has been conducted, a fact of which we have taken judicial notice. As a result, whatever the merits of mother's appeal, the matter is now moot. (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404-405 [appeal may become moot by subsequent events because a reversal would have no practical effect]; *In re Audrey D.* (1979) 100 Cal.App.3d 34, 39 [when parent appealed from two annual review orders, appeal was moot as to the first because it was superseded by the second order, which rendered any errors in the earlier proceedings beyond the power of the appellate court to rectify].) [3]

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[3] Were we to consider the merits, we would likely affirm. Mother contends that under *Judith P., supra*, the failure to provide timely notice of the status report is structural error that requires automatic reversal. As respondent points out, that notion has been severely undercut by subsequent decisions, and a harmless error standard therefore applies. (See *In re James F.* (2008) 42 Cal.4th 901, 915-918; *In re A.D.* (2011) 196 Cal.App.4th 1319, 1326-1328.) Mother's appellate briefs offer no explanation as to how the result might have differed if she had received the report on time. Moreover, mother signed an acknowledgement that she received the Department's case plan report on September 27, 2011, and that report included a distillation of the points made in the status report – that mother was in partial compliance with the court's orders, was enrolled in drug treatment and had produced a letter of enrollment, and that the Department had no results from the drug test mother was asked to take. Furthermore, mother's failure to object that the report had not been timely served waived the issue. (*People v. Scott* (1994) 9 Cal.4th 331, 352-353, and fn. 15 [due process violations may be waived, including failure to timely prepare a probation report].)

DISPOSITION

The appeal is dismissed.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.

As for the failure to afford mother a contested hearing, it also appears that a harmless error standard applies. (See *Ingrid E. v Superior Court* (1999) 75 Cal.App.4th 751, 759 [examining whether a miscarriage of justice occurred in reversing dependency court order for failure to hold a contested hearing].) Mother contested the adequacy of reunification services because she needed housing assistance and help paying her school fees, and the dependency court ordered the Department to provide such assistance. As to those items, therefore, the error is clearly harmless. She also asked the court to provide "Title XXs," which we believe refers to the Adolescent Family Life Act. (42 U.S.C. §§ 300z et seq.) The court ordered that those be provided as well.

As to the sufficiency of mother's progress in order to merit unsupervised visitation with J.T., mother offers no explanation of what evidence she would have introduced to show that she had in fact made sufficient progress. Therefore, the error is likely harmless on that score was well.